October 26, 2000

D.T.E. 99-89

Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of a Buydown of the Power Contract with Canal Electric Company for Power from Seabrook Unit Number 1.

---

APPEARANCES: John Cope-Flanagan, Esq.

800 Boylston Street, 17th Floor

Boston, MA 02199

FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY and COMMONWEALTH ELECTRIC COMPANY

Petitioners

Thomas F. Reilly, Attorney General

By: Joseph W. Rogers

Assistant Attorney General

200 Portland Street

Boston, Massachusetts 02114

Commenter

## I. INTRODUCTION

On October 27, 1999, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together the "Companies"), pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, petitioned the Department of Telecommunications and Energy ("Department") for approval of a sixth amendment ("Sixth Amendment") to a Power Contract by and between Canal Electric Company ("Canal") and the Companies. The Sixth Amendment provided for the Companies' buydown of their embedded cost obligation to Canal with respect to purchases of electricity from Seabrook Unit No. 1 ("Seabrook").

The matter was docketed as D.T.E. 99-89. On January 18, 2000, after notice duly issued, the Attorney General of the Commonwealth ("Attorney General") filed comments on the Sixth Amendment. No other comments were filed.

On March 3, 2000, the Companies supplemented their October 27, 1999 filing. The Companies filed a Restated Sixth Amendment ("Buydown Agreement") that replaces and supercedes the previously filed Sixth Amendment. Commonwealth and Cambridge request that the Department find that: (1) the Buydown Agreement is in the public interest and consistent with G.L. c. 164, §§ 1A, 76, 94 and 94A; (2) the Companies have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of transition costs relating to Seabrook pursuant to G.L. c.164, § 1G; and (3) the buydown amount shall be included in, and recovered as part of, the transition charge, pursuant to G.L. c. 164, §§ 1A, 1G, 94 and 94A.

The record consists of twelve Companies' exhibits and 25 Department exhibits.[(1)]

## II. THE BUYDOWN AGREEMENT

### A. Overview

The Companies stated that they and Canal are currently parties to a life-of-the-unit purchase power agreement ("PPA") with Seabrook that the Companies anticipate will terminate in 2026 ("Seabrook Agreement") (Exh. COM-2, at 2). Commonwealth is entitled to 80.06 percent (approximately 32.5 megawatts ("MW")), and Cambridge is entitled to

19.94 percent (approximately eight MW) of the capacity and related energy produced by that portion of Seabrook owned by Canal (approximately 40.5 MW) (id.).

According to the Companies, the Buydown Agreement calls for Cambridge and Commonwealth to make a lump sum payment of $146,741,000 ("Buydown Amount") to Canal in exchange for Canal's reduction of the gross plant investment of the Seabrook Agreement (Exh. COM-6, at 2-3). Commonwealth agrees to contribute $117,481,000 to the Buydown Amount, while Cambridge agrees to contribute $29,260,000 to the Buydown Amount (id.). The Buydown Agreement states that, related to the reduction in

the gross plant investment, the Companies' Reserve for Accumulated Deferred Income Taxes would be reduced by $57,559,000 (id.).

The Companies explained that the Seabrook Agreement is a life-of-the unit agreement for the sale of capacity and energy by Canal from Seabrook to the Companies (Exh. COM-1, at 2). The Companies stated that the Seabrook Agreement has been approved by the Federal Energy Regulatory Commission ("FERC") (Exh. DTE-1-15).

The Companies stated that adjustments to variable transition costs, including PPA cost reductions, are reconciled in the variable component of their transition charges

(Exhs. DTE-1-7; DTE-1-10). Thus, the financial effects of the Buydown Agreement would be captured in the variable component of the Companies' transition charges (Exhs. DTE-1-7; DTE-1-10).

In terms of the funds being used to accomplish this buydown, the Companies stated that such funds would come from their divestiture proceeds, which are accounted for in the fixed component of their transition charges (Exh. DTE-1-7). The Companies stated that this use of the divestiture proceeds is consistent with guidance provided by the Department in Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company,

D.T.E. 98-78/83-A at 9-14, (1998) (Exh. DTE-1-14).

With respect to Seabrook capital additions and operations and maintenance ("O&M") costs, the Companies stated that, under terms of the FERC-approved Seabrook Agreement, the Companies are responsible for their pro-rata share of these costs (Exh. DTE-1-15). The Companies stated that these capital and O&M costs are determined by a cost-of-service formula specified in the Seabrook Agreement (id.).

B. Transition Charge Mitigation

The Companies claimed that the Buydown Agreement is in furtherance of their efforts to mitigate transition costs, and in compliance both with the requirements of the Restructuring Act ("Act"), and the Department's Order in Cambridge Electric Light Company/ Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111 (1998) (Exh. COM-1, at 1). The Companies presented evidence that the Buydown Agreement will result in a reduction in the overall level of transition costs paid by Cambridge's customers of approximately $2.5 million on a present value basis, and similar savings for Commonwealth's customers of approximately $22.3 million (Exhs. COM-8; COM-9). The Companies stated that the Buydown Agreement will be funded by Commonwealth from funds held by the special-purpose affiliate, Energy Investment Services, Inc. ("EIS") and, by Cambridge, from funds held by EIS and from cash received as a result of Cambridge's divestiture of its generating units (Exh. COM-1, at 3-4).[(2)] The Companies stated that the Buydown Agreement results in mitigation from a reduction to the variable component of their respective transition charges (Exh. DTE-2-5). The

Companies stated that this reduction is partially offset by an increase in the Residual Value Debit and the fixed component of their respective transition charges due to the use of EIS funds which are held in the fixed component (id.). The Companies averred that the customer savings from this Buydown Agreement derive primarily from the difference between the rate of return embedded in the Seabrook Agreement and the projected return earned on EIS funds (id.). The Seabrook Agreement contains an embedded rate of return of 10.55 percent, while the EIS funds have been invested in short-term United States government issues, that have produced an average annual return of 4.69 percent (Exh. COM-12, Sch. 7 (Commonwealth) at 6; Exh. COM-12, Sch. 1 Attachment,

PC-WP2 (Rev.) at 12).

The Companies argue that at the time the Department approved EIS, the COMEnergy system did not have sufficient taxable income to absorb the anticipated deductions associated with the Seabrook buydown (Exh. DTE-2-6). The Companies stated that failure to absorb the losses on a timely basis would be costly to either the COMEnergy shareholders or to their operating company's customers, neither of which was desirable (id.). The Companies stated that although these concerns still exist, the COMEnergy companies have since merged with Boston Edison Company to form NSTAR.[(3)] NSTAR now has a much larger taxable base with which to absorb future tax deductions associated with any contract termination made by either Cambridge or Commonwealth that can be used to offset income generated by any member of NSTAR's consolidated group (id.).

The Companies argue that the Buydown Agreement and the requested ratemaking treatment are fully consistent with the Department's directives to Massachusetts electric utilities to mitigate transition costs by engaging in good faith efforts to renegotiate, restructure, reaffirm, terminate or dispose of existing contractual commitments for purchased power

(Exh. COM-1, at 4, citing, Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-119/126, at 38 (1999)). In addition, the Companies stated that they, in entering into the Buydown Agreement, have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount in transition costs relating to the Seabrook Agreement in accordance with G.L. c. 164, § 1G (id. at 5). The Companies stated that this Buydown Agreement represents the maximum possible mitigation at this time because the Buydown Agreement does not preclude the possibility of additional mitigation (Exh. DTE-3-1). For example, the Companies stated that the Seabrook Agreement could ultimately be sold to a third-party, which would likely result in further mitigation of transition costs (id.).

## III. ATTORNEY GENERAL COMMENTS

The Attorney General asserted that a buydown of Seabrook embedded costs would be in the best interests of the Companies' customers (Attorney General Comments at 2). The Attorney General stated that he has long argued that the Seabrook-related stranded cost burden should be reduced by applying the proceeds from the Companies' divestiture of

the Canal Units (id.). Nonetheless, the Attorney General argued that a number of factual and ratemaking issues remain unresolved, and that the Department's assessment of the Buydown Agreement must therefore address: (1) whether the Companies' Seabrook costs are generation-related transition costs or above-market PPA costs; (2) the propriety of the more than twelve-month delay between the time that the Companies received the proceeds of the Canal divestiture and the time that the buydown was proposed;[(4)] and (3) what, if any, ratemaking treatment should be given to post-December 31, 1995 Seabrook investments as well as ongoing Seabrook costs (id.). The Attorney General also asserts that the Companies must provide information regarding the remaining available balance of EIS funds and clarify whether payout of the buydown funds will occur in one step or over a number of years (id.).[(5)] The Attorney General states that he does not oppose the proposed buydown subject to a resolution of the foregoing matters (id. at 3).

## IV. STANDARD OF REVIEW

The Department's regulations do not prohibit a company from negotiating a release from the obligations it has incurred, but such releases are subject to the Department's review. Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Altresco-Lynn, Inc. and Altresco-Pittsfield L.P., D.P.U. 91-142 (1991); and Cambridge Electric Light Company and Commonwealth Electric Company, D.P.U. 91-153, at 15 (1991). The Department has also found that a buy-out of a Commonwealth contract with Lowell Cogeneration Limited Partnership was in the public interest. Commonwealth Electric Company,

D.T.E. 99-69 (1999). In Electric Industry Restructuring, D.P.U. 95-30, at 32-35 (1995), the Department recognized the amount by which the cost of existing contractual commitments for purchased power exceeds the competitive market price for generation as a cognizable component of stranded costs. That Order further stated that a reasonable opportunity to recover stranded costs would be in the public interest. The Act also allows for recovery of costs for existing contractual obligations for purchased power through the transition charge. G.L. c. 164, § 1G(b)(1)(iv). In D.T.E. 97-111, at 90, the Department found that the Companies' restructuring plan, which provided for the buy-out of above-market purchase power obligations, was consistent with or substantially complied with the Act.

G.L. c. 164, § 1.00 et seq., requires electric companies to seek to mitigate transition costs, including as one mitigation method the renegotiation of above-market PPAs. G.L. c. 164, § 1G(d)(1)-(2). The Act further provides that if a negotiated contract buy-out is likely to achieve savings to ratepayers and is otherwise in the public interest, the Department is authorized to approve the recovery of the costs associated with the contract buy-out. G.L. c. 164, § 1G(d)(2)(ii).

## V. ANALYSIS AND FINDINGS

In D.P.U./D.T.E. 97-111, at 62, the Department stated that the resolution of the treatment of Seabrook investments would be resolved, "in the first case reconciling actual transition costs to estimated transition costs." However, since that Order, the Department approved

the Companies' divestiture of substantially all of their non-nuclear generation assets and the Companies' proposal to establish EIS for managing the proceeds of the divestiture. D.T.E. 98-78/83-A. This proceeding concerns the Companies' proposal to buydown the Seabrook Agreement from funds held by EIS. As such, this proceeding is the appropriate venue in which to resolve the treatment of Seabrook investments.

The Seabrook Agreement further amends a FERC-approved 1986 contract between the Companies and Canal that provides for the sale of capacity and energy by Canal from Seabrook to the Companies. The Department has found that the above-market portion of the Seabrook Agreement may be recovered in the Companies' transition charges.

D.P.U./D.T.E. 97-111, at 61; see also Western Massachusetts Electric Company,

D.T.E. 97-120, at 85-86 (1999) (WMECo's agreements with Connecticut Yankee, Vermont Yankee and Maine Yankee considered PPAs for the purposes of determining transition costs). Therefore, for the purposes of the Companies' inclusion of costs related to the Seabrook Agreement in their respective transition charges, the Seabrook Agreement shall be treated as a PPA.

As a result of the Buydown Agreement, Commonwealth's ratepayers will save approximately $22.3 million and Cambridge's ratepayers will save approximately $2.5 million in transition costs, on a present value basis (Exhs. COM-8; COM-9). The savings derive from the difference between the rate of return embedded in the Seabrook Agreement and the return earned on the EIS funds. The Department finds that the savings resulting from the Buydown Agreement will help mitigate transition costs and produce cost savings for both Commonwealth and Cambridge ratepayers.

This Buydown Agreement is the type of action specifically encouraged by the Legislature in G.L. c. 164, § 1G(d). That is, the Companies have taken all reasonable steps to mitigate, to the maximum extent possible, at this time, the total amount of transition costs relating to the Seabrook Agreement. The Buydown Agreement is consistent with applicable law, will achieve substantial savings to ratepayers, will reduce the Companies' transition charges, and will have no adverse impacts of the Companies' ratepayers. Based upon the above, the Department finds that the Buydown Agreement is in the public interest. Accordingly, the Department approves the Buydown Agreement and authorizes Cambridge and Commonwealth to recover the payments in their transition charges. See Boston Edison Company, D.T.E. 98-119 (1999) (above-market buy-outs of existing PPAs may be included in the transition charge).

The Companies propose to use funds invested with EIS to make payments and to reflect those payments in the fixed component of their transition charge. In D.T.E. 98-78/83-A

at 12-13, the Department observed that the Companies "agreed to pursue the buyout of above- market PPAs" as an "investment alternative" for EIS, which would ameliorate the adverse financial impacts on ratepayers of an otherwise low rate of return on EIS investments. The Department directed the Companies "to explore all other uses of the

proceeds that would provide ratepayers with a [rate of return] more in line with [that] included in the Companies' Restructuring Plan." Id. at 13. The Department finds that the Companies' use of EIS funds to make the contract buydown payments appears to be exactly what the Department ordered the Companies to do. Therefore, the Department approves this use of EIS funds.

The Attorney General has taken issue with the timing of the Buydown Agreement. The Attorney General argued that the Companies should have applied the EIS funds towards the buydown of the Seabrook Agreement as soon as EIS was approved by the Department (i.e., December 31, 1998). The Companies stated that concerns about negative tax implications of the buydown of the Seabrook Agreement were not alleviated until the merger of COMEnergy and Boston Edison Company, which was not completed until the summer of 1999. In light of this concern and the timing of the merger, the Department finds it reasonable that the Companies did not file the Buydown Agreement until after the merger was finalized.

In addition, the Attorney General takes issue with the ratemaking treatment of the post-December 31, 1995 Seabrook investments as well as ongoing Seabrook costs. Because the Department has determined that costs related to the Seabrook Agreement will be treated as an above-market PPA rather than as owned generation, the Department finds here that the concerns of the Attorney General are no longer relevant because these costs are embedded in the cost-of-service formulas specified in the Seabrook Agreement.

We finally address the Attorney General's concern about the remaining available balance of the EIS funds, and whether the buydown will occur in one step or over a number of years. After the Attorney General filed his comments, the Companies provided the Department their EIS funds balance, and evidence that the Companies would make a lump sum payment to Canal in consideration for Canal's reduction of the gross plant investment of the Seabrook Agreement (Exh. COM-6, at 2-3).

## VI. ORDER

Accordingly, after due notice, opportunity for public comment, and consideration, it is hereby

ORDERED: That the Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of a Buydown of the Power Contract with Canal Electric Company for Power from Seabrook Unit Number 1 is approved; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company may include the Buydown Amount in the fixed portion of their transition charges, pending any necessary revision of this ratemaking treatment pursuant to their next reconciliation account proceedings.

By Order of the Department,

_____

James Connelly, Chairman

_____

W. Robert Keating, Commissioner

_____

Paul B. Vasington, Commissioner

_____

Eugene J. Sullivan, Jr., Commissioner

_____

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Department, on its own motion, moves the Companies' responses to Department information requests into the record of this proceeding. They are marked as follows: Exhs. DTE-1-1 through 1-17; DTE-2-1 through 2-6; and DTE-3-1 through 3-2.

2. The Companies stated that the Department's approval of EIS in D.T.E. 98-78/83-A permitted the Companies to use EIS to hold and manage the Canal proceeds net of the Canal-related fixed component of their respective transition charge and associated income taxes (Exh. COM-1, at 4).

3. In July 1999, the Department approved a rate plan filed by Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company (together, "BECo/ComEnergy"). Boston Edison Company/Cambridge Electric Light Company/Commonwealth Electric Company/Commonwealth Gas Company, D.T.E. 99-19 (1999). The rate plan was filed in conjunction with the merger of the BECo/ComEnergy's parent companies, BEC Energy

and Commonwealth Energy System. Id. at 1. The parent is called "NSTAR," a Massachusetts business trust. Id.

4. The Attorney General contends that, had the Companies acted sooner, stranded costs could have been reduced by $10.7 million dollars (Attorney General Comments at 2).

5. Pursuant to Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 98-78-A, the Companies provided an EIS activity report on February 4, 2000. This report covered the period from January 1, 1999 through December 31, 1999. This EIS activity report delineated monthly receipts and disbursements, and provided the EIS fund balance as of December 31, 1999.